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**FISCAL IMPACT STATEMENT**

**LS 6905**

**BILL NUMBER:** SB 349

**NOTE PREPARED:** Mar 6, 2006

**BILL AMENDED:** Feb 28, 2006

**SUBJECT:** Title Insurance.

**FIRST AUTHOR:** Sen. Waltz

**FIRST SPONSOR:** Rep. Burton

**BILL STATUS:** As Passed House

**FUNDS AFFECTED:**     **GENERAL**  
                          **X DEDICATED**  
                          **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** *Licensure:* This bill specifies requirements for the conduct of a title insurance agent or title agency, including licensure, continuing education, placement of title insurance business, record keeping, reporting, and management and use of funds.

*Title Insurance Enforcement Fund:* The bill establishes the Title Insurance Enforcement Fund. It also requires the Department of Insurance (DOI) to establish a title insurance enforcement unit to enforce title insurance law.

*Foreign or Alien Insurance Company:* The bill requires a foreign or alien insurance company that provides certain surety bonds to appoint the commissioner of the DOI as the company's agent for service of process in certain actions.

*Catastrophic Liability Fund:* It allows certain members of the Political Subdivision Catastrophic Liability Fund to withdraw from membership and receive a rebate of prior assessments. It provides for a release from liability for the withdrawing member and the fund.

**Effective Date:** July 1, 2006.

**Explanation of State Expenditures:** *Licensure.* The DOI commissioner must adopt rules and prescribe forms to establish criteria and a process for licensure of a title agency or title insurance agent. A title agency or title insurance agent must complete necessary continuing education. Expenses incurred for the administration of the license are to be paid from the fund described below.

*Title Insurance Enforcement Fund.* The fund is established to provide funding for DOI operations that are related to title insurance and to pay the costs of hiring and employing staff in the areas of enforcement of title insurance law. The fund must be administered by the commissioner. The expenses of administering the fund must be paid from money in the fund. The DOI, however, may incur expenses associated with the title insurance license before revenue is generated for the fund.

*Title Insurance Enforcement Unit.* The commissioner must establish a title insurance enforcement unit to enforce the provisions of the bill. The unit must investigate deceptive acts in connection with title insurance, investigate violations, and cooperate with federal, state, and local law enforcement agencies in the investigation of deceptive acts and violations of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.). Other state agencies may cooperate with the unit. The commissioner may file a complaint with a state entity to enforce the provisions of the bill. Expenses associated with these provisions could be paid for from the Title Insurance Enforcement Fund. The DOI would have to cover any expenses associated with enforcement requirements or use whatever funds become available from fines and penalties. (See *Explanation of State Revenues* below.)

*Rules.* The DOI commissioner may adopt rules to implement the provisions of the bill. The DOI should be able to adopt rules given its existing level of budget and resources.

*Foreign or Alien Insurance Company:* The bill requires a foreign or alien insurance company that provides certain surety bonds to appoint the commissioner of the DOI as the company's agent for service of process in certain actions. This provision will have no fiscal impact.

(Revised) *Catastrophic Liability Fund:* This bill allows certain members of the Political Subdivision Catastrophic Liability Fund to withdraw from membership and receive a rebate of prior assessments. It provides for a release from liability for the withdrawing member and the fund. The fund commission must pay a rebate to a member at any time the reserve account exceeds the \$5 M balance required. Currently, the fund has a balance of about \$8 M. The member that wishes to withdraw wishes to receive a rebate of approximately \$3 M, which would be expended from the fund. (See *Explanation of Local Expenditures* below.)

*Civil Action.* The commissioner or Attorney General may bring an action in a court with jurisdiction to enjoin violations of the federal Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.). Expenses associated with any future civil action are unknown. Presumably, the entities will be able to cover these expenses.

*Penalty Provisions.* If a title insurance agent or title agency defalcates, converts, or misappropriates funds held in trust by the title insurance, the agent or title agency commits a Class D felony. A title insurance agent, an officer, a director, or an employee of a title insurance agent, or a person associated with a title insurance agent or an officer, a director, or an employee of a title insurance agent, who is an independent contractor for bookkeeping or similar purposes who knowingly or intentionally converts or misappropriates funds received or held in escrow or in trust by the title insurance agent or a person who knowingly or intentionally receives or conspires to receive funds commits a Class D felony.

With respect to the above violations, the offense is a Class C felony if the amount of money converted, misappropriated, or received, or for which there is a conspiracy is more than \$10,000 but less than \$100,000. The offense is a Class B felony if the amount of money involved is over \$100,000.

A Class B felony is punishable by a prison term ranging from 6 to 20 years, depending upon mitigating and

aggravating circumstances. A Class C felony is punishable by a prison term ranging from 2 to 8 years. A Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor. The average expenditure to house an adult offender was \$20,977 in FY 2005. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

**Explanation of State Revenues:** *Title Insurance Enforcement Fund.* The Treasurer of State must invest money in the fund not needed to meet the obligations of the fund in the same manner as other public money may be invested. Money in the fund at the end of a state fiscal year does not revert to the state General Fund. The following must be deposited in the fund:

- (1) All fines, monetary penalties, and costs imposed upon persons by the DOI for violations of the title licensure law.
- (2) Other amounts remitted to the commissioner or the DOI that are required by law to be deposited into the fund.

Currently, no fines or penalties have been assessed for violation of the title insurance law. Non-compliance will not be penalized until July 2006. Currently, fines would be deposited in the state General Fund. The bill provides that fines and penalties would be deposited in the Title Insurance Enforcement Fund.

*Civil Penalties.* If the commissioner, after notice and hearing, determines that a person has violated the provisions of the bill, the commissioner may impose a civil penalty of not more than \$10,000 for each violation. If the person is a title insurance agent, the commissioner may order revocation or suspension of the title insurance agent's license.

*Penalty Provisions.* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund could increase. The maximum fine for a Class B felony is \$10,000. The maximum fine for a Class C felony is \$10,000. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

**Explanation of Local Expenditures:** *Catastrophic Liability Fund:* This bill allows a high-risk member of the Political Subdivision Catastrophic Liability Fund to withdraw from membership of the fund. Allowing the member to withdraw could affect local expenditures for those units who belong to the fund to the extent that if the high-risk member is no longer a part of the fund, premiums for other local units could remain constant for the upcoming year or not increase as much as they would have had the high-risk member remained with the fund.

*Civil Action.* The bill provides certain provisions whereby civil action for recovery of damages or other appropriate sanctions for the benefit of the title insurer and the title insurer's policyholders and creditors may be taken. This provision could increase local court expenditures. However, it is possible that civil action could be taken regardless of the bill's provisions. It is assumed that local courts will be able to cover the expenses associated with a civil action given their existing resources and budgets.

*Penalty Provisions.* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

**Explanation of Local Revenues:** (Revised) *Catastrophic Liability Fund:* This bill allows a Lake County member of the Political Subdivision Catastrophic Liability Fund to withdraw from membership of the fund and to receive a rebate of approximately \$3 M from the fund. The member has elected to self-insure.

*Penalty Provisions.* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

**State Agencies Affected:** DOI, Department of Correction, Professional Licensing Agency, the Department of Financial Institutions, the Securities Division of the Office of the Secretary of State, the Supreme Court Disciplinary Commission, the Housing Finance Authority, the Department of State Revenue, the State Police Department, the Lieutenant Governor, and the Indiana Real Estate Commission.

**Local Agencies Affected:** Political subdivisions who are members of the Catastrophic Liability Fund; Prosecuting attorneys, trial courts, and local law enforcement agencies.

**Information Sources:** Carol Cutter, Deputy Commissioner for Health Issues, DOI, 232-5695; Chet Pietras, Deputy Commissioner, DOI; Indiana Sheriffs' Association, Department of Correction.

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